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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,937	08/04/2003	Jack J. Johnson	33472/1	5798
7590 07/21/2009				
Geophonic Networks Inc 158 Chateau Thierry Avenue Madison, NJ 07940			EXAMINER BORISSOV, IGOR N	
			ART UNIT 3628	PAPER NUMBER
			MAIL DATE 07/21/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/633,937

**Applicant(s)**

JOHNSON ET AL.

**Examiner**

Igor N. Borissov

**Art Unit**

3628

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7, 9-25, 27-35, 49-57, 59-72, 74-95 and 97-130 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-25, 27-35, 49-57, 59-72, 74-95 and 97-130 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Final Drawing Review (PTO-849)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

#### **DETAILED ACTION**

##### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee **set** forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/30/2009 has been entered.

##### ***Remarks***

Information Disclosure Statement (IDS) filed 04/30/2009 has been considered. In view of the IDS, claims 1-7, 9-25, 27-35, 49-57, 59-72, 74-95 and 97-130, earlier indicated as allowable, are rejected in view of newly submitted prior art.

##### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-3, 6, 7, 9, 10, 12, 13, 15-22, 25, 27, 29, 31-35, 49-52, 55-57, 59, 61, 62, 64-66, 68, 70-72, 74, 75, 77, 78, 80-87, 90, 92, 97-99, 101, 102, 105, 106, 108-117 and 120-122 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sibley, Jr. (US 4,677,552) in view of Chasek (US 5,237,507).**

Independent Claims

Sibley, Jr. (Sibley) teaches a computer-implemented method and system for automated bidding process, said method comprising:

**Claims 1, 20, 49, 68, 86, 102, and 113,**

transmitting at least a portion data associated with the at least one customer of the at least one reseller to at least a first portion of the plurality of energy Providers (C. 5, L. 41-51; C. 9, L. 22-28);

receiving bids (from the plurality of participants) to provide electric power or natural gas to the at least one reseller for use by the at least one customer of the at least one reseller, (Fig. 8),

processing the bids in accordance with the auction rules to produce processed bid data, and storing the bids and the processed bid data in a data base of the moderating computer as first bidding data (C. 3, L. 4-15; C. 5, L. 52-60);

transmitting at least a portion of said first bidding data (processed data) to at least a (second) portion of energy Providers (participants of the auction) (C. 12, L. 1418);

designating at least one Provider of the plurality of energy Providers to provide electric power or natural gas to the at least one reseller for use by the at least one customer, with each designated Provider to supply at least a portion of the electric power or natural gas needed by the at least one customer during at least a portion of a specific future time interval (determining a winner) (C. 12, L. 14-18).

While Sibley teaches bidding for providing oil and gasoline, Sibley does not specifically teach electric power or natural gas. However, it is old and well known that electric power or natural gas as well as oil and gasoline are used as energy source. Therefore, it would have Sibley been obvious to one having ordinary skill in art the time the invention was made to modify Sibley to include that said bids for providing energy include bids for providing electric

power or natural gas, because it would advantageously allow participants to choose a source of energy which is the most suitable for a particular geographical area.

Also, Sibley, while teaching transmitting at least a portion data associated with the at least one customer of the at least one reseller to at least a first portion of the plurality of energy Providers (C. 5, L. 41-51), does not specifically teach that said data includes at least a portion of *historical energy usage data* associated with the at least one customer.

Chasek teaches a computer-implemented method and system for conducting energy trades in real time, wherein energy usage from end users is obtained, and, based on said usage, energy trades are conducted via a central computer responsive to demand (C. 4, L. 15-44; C. 5, L. 19, 57-58; C. 7, L. 25-66).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Sibley to include transmitting historical energy usage data associated with the at least one reseller, or with the at least one customer, to at least a portion of the plurality of energy providers, as disclosed in Chasek, because it would advantageously allow the participants to estimate the demand and supply curve which is needed for making trading decisions, and conduct trades such to avoid purchasing energy at price surge, as disclosed in Chasek (C. 5, L. 58). Furthermore, in this case, each of the elements of the cited references combined by the Examiner performs the same function when combined as it does in the prior art. Thus, such a combination would have yielded predictable results. See *Sakraida*, 425 U.S. at 282, 189 USPQ at 453. Therefore, Supreme Court Decision in *KSR International Co. v. Teleflex Inc.* (KSR, 82 USPQ2d at 1396) forecloses the argument that a specific teaching, suggestion, or motivation is required to support a finding of obviousness. See the recent Board decision *Ex parte Smith*, --USPQ2d--, slip op. at 20, (Bd. Pat. App. & Interf. June 25, 2007).

Dependent Claims

**Claims 2, 21 and 50.** Chasek teaches that the at least one customer includes at least one end user (C. 7, L. 25-66).

**Claims 3, 22, 51, 108, 109, 119.** See reasoning applied to Claims 2, 21 and 37.  
**Claims 13, 16, 29, 62, 65, 78, and 80.** Conducting a trade of energy via the auction indicates ability to supply the contracted volume of energy.

**Claims 6, 15, 25, 31, 55, 64 and 90.** Said method and system wherein the auction rules include bid formulation requirements specifying the required elements that must be reflected in the bid for the moderating computer to consider the bid valid (conducting the auction under the U. S. trading rules enforced by the Securities and Exchange Commission) (C. 5, L. 52-60).

**Claims 7, 56, 70 and 71.** Said method, in which the bid formulation requirements specify that all bids indicate the quantity of energy and a specific price (Sibley; C. 7, L. 66-67).

**Claims 9, 12, 59, 61, 77 and 92.** See reasoning applied to Claim 1.

**Claims 10, 27 and 75.** Receiving decision rules and processing at least a portion of the first bidding data and the decision rules, and designating at least a first energy provider (Sibley; C. 3, L. 4-15; C. 5, L. 52-60).

**Claims 81 and 83-85.** See reasoning applied to Claim 68.

**Claims 17, 66 and 82.** Conducting a trade of energy via the auction indicates contracting for energy and providing for supply at least a portion of the

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electric power or natural gas needed by the at least one reseller, or by the at least one customer, during the specific future time interval.

**Claim 18.** See reasoning applied to Claim 1.

**Claims 19, 34, 35.** Said method and system in which at least a portion of the processing and communications functions of the central host (moderating computer) or the local exchange computer (first control computer) are performed by at least one adjunct computer (Sibley; C. 6, L. 30-33).

**Claims 32 and 33.** See reasoning applied to Claim 20.

**Claims 57 and 72.** See reasoning applied to Claims 49 and 86.

**Claims 52 and 87.** See reasoning applied to Claims 49 and 86.

**Claim 74.** See reasoning applied to Claim 68.

**Claims 97-99, 101, 105, 106, 108, 111, 112, 114-117 and 120-122.**

Same reasoning as applied above.

**Claims 4, 5, 14, 23, 24, 30, 53, 54, 63, 67, 69, 79, 88, 89, 93, 100, 103, 104, 107, 118 and 123-130 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sibley, Jr. in view of Chasek and further if view of Silverman et al. (US 5,136,501).**

*Independent Claims*

**Claims 123 and 130,**

Sibley teaches said computer-implemented method and system for automated bidding process, said method comprising:

transmitting at least a portion of historical energy usage data associated with the at least one customer of the at least one reseller to at least a first portion of the plurality of energy Providers (C. 5, L. 41-51); C. 9, L. 22-28 receiving bids (from the plurality of participants) to provide electric power or natural gas to the at least one reseller for use by the at least one customer of the at least one reseller, (Fig. 8);

processing the bids in accordance with the auction rules to produce processed bid data, and storing the bids and the processed bid data in a data base of the moderating computer as first bidding data (C. 3, L. 4-15; C. 5, L. 52-60);

transmitting at least a portion of said first bidding data (processed data) to at least a (second) portion of energy Providers (participants of the auction) (C. 12, L. 1418);

designating at least one Provider of the plurality of energy Providers to provide electric power or natural gas to the at least one reseller for use by the at least one customer, with each designated Provider to supply at least a portion of the electric power or natural gas needed by the at least one customer during at least a portion of a specific future time interval (determining a winner) (C. 12, L. 14-18).

While Sibley teaches bidding for providing oil and gasoline, Sibley does not specifically teach electric power or natural gas. However, it is old and well known that electric power or natural gas as well as oil and gasoline are used as energy source. Therefore, it would have been obvious to one having ordinary skill in art the time the invention was made to modify Sibley to include that said bids for providing energy include bids for providing electric power or natural gas, because it would advantageously allow participants to choose a source of energy which is the most suitable for a



particular geographical area.

Also, Sibley, while teaching transmitting at least a portion data associated with the at least one customer of the at least one reseller to at least a first portion of the plurality of energy Providers (C. 5, L. 41-51), does not specifically teach that said data includes at least a portion of *historical energy usage data* associated with the at least one customer.

Chasek teaches a computer-implemented method and system for conducting energy trades in real time, wherein energy usage from end users is obtained, and, based on said usage, energy trades are conducted via a central computer responsive to demand (C. 4, L. 15-44; C. 5, L. 19, 57-58; C. 7, L. 25-66).

It would have been obvious to one having ordinary skill in art the time the invention was made to modify Sibley to include transmitting historical energy usage data associated with the at least one reseller, or with the at least one customer, to at least a portion of the plurality of energy providers, as disclosed in Chasek, because it would advantageously allow the participants to estimate the demand and supply curve which is needed for making trading decisions, and conduct trades such to avoid purchasing energy at price surge, as disclosed in Chasek (C. 5, L. 58). Furthermore, in this case, each of the elements of the cited references combined by the Examiner performs the same function when combined as it does in the prior art. Thus, such a combination would have yielded predictable results. See *Sakraida*, 425 U.S. at 282, 189 USPQ at 453. Therefore, Supreme Court Decision in *KSR International Co. v. Teleflex Inc.* (KSR, 82 USPQ2d at 1396) forecloses the argument that a specific teaching, suggestion, or motivation is required to support a finding of obviousness. See the recent Board decision *Ex arte Smith*, --USPQ2d--, slip op. at 20, (Bd. Pat. App. & Interf. June 25, 2007).

Also, Sibley and Chasek does not explicitly teach that said designated

step includes: designating, on the basis of the processed bid information, *at least two Providers* of the plurality of energy Providers to supply electric power or natural gas needed by the at least one end user.

Silverman et al. teaches a computer-implemented method and system for automated bidding process for commodities market, said method disclosing accepting a matching (by price) bid, and if order is not filled, continuing to accept multiple matching bids from multiple bidders until the order is filled (C. 21, L. 9-29). Furthermore, "accepting multiple matching bids from multiple bidders *until the order is filled*" suggests "100% power needed" feature.

In this case, each of the elements of the cited references combined by the Examiner performs the same function when combined as it does in the prior art. Thus, such a combination would have yielded predictable results. *See Sakraida*, 425 U.S. at 282, 189 USPQ at 453. Therefore, Supreme Court Decision in *KSR International Co. v. Teleflex Inc.* (KSR, 82 USPQ2d at 1396) forecloses the argument that a specific teaching, suggestion, or motivation is required to support a finding of obviousness. See the recent Board decision *Ex arte Smith*, --USPQ2d--, slip op. at 20, (Bd. Pat. App. & Interf. June 25, 2007).

Furthermore, both Sibley and Ausubel specify that said system can be implemented based on one central computer, or use a plurality adjunct or remotely located computers.

*Dependent Claims*

**Claims 4, 5, 14, 23, 24, 30, 53, 54, 63, 67, 69, 79, 88, 89, 93, 100, 103, 104, 107, 118, 124-128.** Same reasoning as applied to claims 123 and 130.

**Claims 11, 28, 60, 76 and 91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sibley, Jr. in view of Chasek and further if view of Mistr, Jr. (US 5,794,212).**

Dependent Claims

**Claims 11, 28, 60, 76 and 91.** Sibley in view of Chasek teaches all the limitations of Claims 11, 28, 60, 76 and 91, except specifically teaching notifying a first DISCO (distributor) serving the at least one reseller, or serving the at least one customer, of the designation of at least a first designated provider.

Mistr, Jr. (Mistr) teaches a method and system for conducting transactions between energy suppliers, buyers and transmission suppliers (distributors), wherein information regarding said energy transaction is communicated to all parties (Abstract).

It would have been obvious to one having ordinary skill in art the time the invention was made to modify Sibley in view of Chasek to include notifying a distributor serving the at least one reseller, or serving the at least one customer regarding energy transaction, as disclosed in Mistr, because it would advantageously allow to identify and analyze the available transmission paths, thereby providing cost-efficient movement of energy, as specifically stated in Mistr (C. 4, L. 55-58).

**Claim 94 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sibley, Jr. in view of Chasek and further if view of Witek et al. (US 6,253,188).**

Dependent Claim

**Claim 94.** Sibley in view of Chasek teaches all the limitations of claims 94, including using the trade exchange over the wide area network, except explicitly teaching that said distributing includes posting the processed request on a website or computer bulletin board accessible to the providers.

Witek et al. (Witek) teaches a method for distributing or processed data, wherein said data is posted on a Web page (posing of selected ads in a

designated section of a Web newspaper) (See: Summary).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Sibley in view of Chasek to include that said distributing includes posting the processed request on a website or computer bulletin board accessible to the providers, as disclosed in Witek, because it would advantageously allow to present said data to a plurality of users simultaneously.

**Claim 95 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sibley, Jr. in view of Chasek and further if view of Geller et al. (US 6,300,948).**

*Dependent Claim*

**Claim 95.** Sibley in view of Chasek teaches all the limitations of claims 95, except specifically teaching that said bids are received by means of a software defined template.

Geller et al. (Geller) teaches a method for creating and using a user interface, wherein information from the user is obtained via a software defined template (c. 21, L. 8-21).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Sibley in view of Chasek to include that said bids are received by means of a software defined template, as disclosed in Geller, because it would advantageously allow to automate processing of data, thereby saving time.

***Conclusion***

Any inquiry concerning this communication or earlier communications from

the examiner should be directed to Igor Borissov whose telephone number is 571-272-6801. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Igor N. Borissov/  
Primary Examiner, Art Unit 3628  
07/14/2009